

PUBLIC LAW BOARD NO. 2206

AWARD NO. 24

CASE NO. 34

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the effective Agreement when failing to properly establish and permit W. T. Moratis to be examined by a Medical Board under the provisions of Physical Disqualification Rule 41. (System File T-D-118C).
- (2) That W. T. Moratis now be paid all straight time, overtime, holidays and vacation that his seniority permitted him to earn as a Track Sub-department Roster 1 Rank C employe for violation referred to in part one (1) of this claim."

OPINION OF THE BOARD:

On May 8, 1977, Claimant W. T. Moratis was held out of service when the Carrier's Chief Medical Officer found him physically unfit to work as a section laborer because of a back condition.

On August 5, 1977, the Organization furnished the Carrier with a dissenting medical opinion from Claimant's personal physican and requested that a Medical Board be established to determine Claimant's physical fitness to perform section laborer's duties.

The Medical Board was established consisting of Claimant's personal orthopedist, Carrier's orthopedist and a netural orthopedist selected by the parties in this case.

The Medical Board convened on September 21, 1977, reviewed the Claimant's medical data and, in an unanimous opinion, decided Claimant was physically unfit to perform section laborer's duties.

Under date of May 18, 1978, the Organization requested another Medical Board, contending that, as Claimant had not been personally examined by the Medical Board on September 21, 1977, the unanimous decision of that Board was not a proper evaluation.

Our review of the record persuades us that the Organization's objections must be dismissed. Analysis of the record makes it clear another examination of the Claimant on September 21, 1977 was not essential to an evaluation of his physical condition by that Board.

The Medical Board found that Claimant was physically unfit to perform section laborer's duties. It is not for this Board to substitute its judgment for that of the Medical Board. In light of the facts in this case, there is no basis for the claim. Moreover, this Board having reviewed the record carefully, finds that the procedural questions raised are not dispositive of the claim.

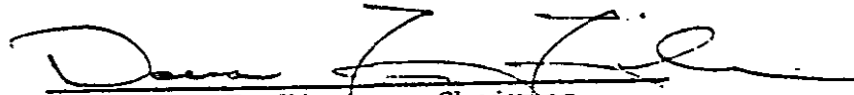
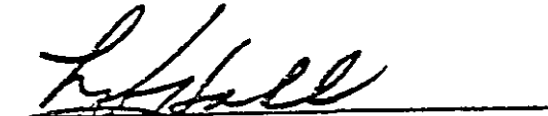
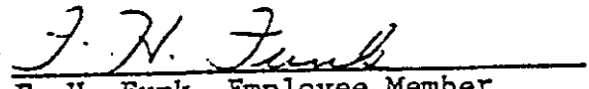
FINDINGS:

Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman
L. K. Hall, Carrier Member
F. H. Funk, Employee MemberDate: July 15, 1980

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